Taking the Law into Our Own Hands: Kant on the Right to Revolution

If we place ourselves at the end of this tremendous process, where the tree at last brings forth fruit, where society and the morality of custom at last reveal what they have simply been the means to: then we discover that the ripest fruit is the sovereign individual, like only to himself, liberated again from the morality of custom, autonomous and supramoral.

Nietzsche¹

1. Taking the Law into Our Own Hands

Morality is unconditional and overriding. Its demands are uncompromising and its claims take priority over all others. Yet we can all think of situations in which, for reasons that seem to us honorable, unselfish, or conscientious, we would do things which morality seems to forbid. I want to ask how we can account for this fact.

There are two attempts to deal with the problem that, for obvious reasons, I will call skepticism and dogmatism. The skeptic denies that morality is unconditional and overriding. The dogmatist insists that it is, and argues that either the actions in question are not wrong, or, if they are, a good person just won’t do them.²

² This use of the terms dogmatism and skepticism is of course borrowed from Kant. Kant characterizes the dogmatist as one who assumes “that it is possible to make progress with pure knowledge, according to principles, from concepts alone” (C1 B.xxxv). Dogmatism itself produces skepticism when dogmatic claims are found to be defeasible, or, as in the case of antinomy, when dogmatic arguments can be made on both sides of a question. The alternative is criticism, which calls into question reason’s jurisdiction over the matter at hand; and sometimes ends by establishing only a more limited jurisdiction than reason had originally claimed. I leave the reader to judge for herself
Some skeptics and dogmatists are merely trying to domesticate the phenomena. The skeptic may have pretensions to being worldly and realistic, laughing at the ponderous claims of moralists. The dogmatist may simply be a moralistic prig. But there are serious and attractive versions of both views. The skeptic may think, as Bernard Williams does, that a life in which moral considerations can always override love and the cherished projects of a lifetime is not recognizably human.³ The dogmatist may think that a suitably refined and sensitive moral theory will show us that the actions in question are not wrong after all, but, in the complex or terrible situations in which we are tempted to choose them, simply the right things to do.

A Kantian’s job is to find the path between skepticism and dogmatism. In this essay, I try to construct an account of one category of cases in which a good person will do a terrible thing: cases in which she judges that, for moral reasons, she must take the law into her own hands. There are many such cases, but the one I will examine is the standout in the category: the case of the conscientious revolutionary. From Kant I will derive an account of this case that, unlike skepticism and dogmatism, preserves at least something of both of the thoughts with which I began. Morality is unconditional and overriding, and revolution is always wrong. Yet sometimes the good person finds she must rebel.

I have another motive for examining this category of cases. It is that human beings seem to find them profoundly interesting and somehow attractive. Literature and the movies are full of them. We are shown a good person who, rather than violate his own standards, submits to the unjust treatment of himself and others. He holds out against solicitations to rebel long enough to convince us that his honor is real. And then a moment finally comes when, breaking the rules he has set for himself, he takes up his weapons and fights. Fletcher Christian finally mutinies against Captain Bligh. Ransom Stoddard, who came to the west to bring it law, picks up his gun and heads to the street for a shootout with Liberty Valance.⁴ Instead of feeling disappointed at their defection, these are moments that we find thrilling.

Neither skepticism nor dogmatism can give an adequate account of this fact. The skeptic thinks that the hero has awakened to a more realistic view.

³ See, for instance, Williams’s essays “Persons, Character, and Morality” and “Moral Luck,” in Moral Luck.
⁴ In the well-known story Mutiny on the Bounty, and in the movie, The Man Who Shot Liberty Valance, directed by John Ford. There are certain other popular characters whose appeal is certainly
of the role of morality in human life. The dogmatist thinks that the hero has arrived at a more sensitive and refined conception of what morality demands. Both see these stories as what are sometimes called “coming of age” stories, in which the hero advances to maturity. This seems to me to be wrong in every way. Although the heroes of these stories have not previously taken the law into their own hands, they are not morally immature characters who have finally seen what they ought to do. And it is important to us that they do what they do with a sense not of rightness but of profound loss and pain. If Fletcher Christian rebelled any earlier, we wouldn’t admire and sympathize with him nearly as much as we do. The moments when someone arrives at a more sensitive view of what morality demands, or of its role in human life, are no doubt important and deeply formative. But they are not thrilling, like the moment when the hero takes the law into his own hands.

2. Kant on Revolution

Kant’s attitudes towards revolution, both in his work and in his life, are notoriously paradoxical. In many of his published works, revolution is roundly condemned. In the *Metaphysical Principles of Justice*, Kant argues that “there is no right of sedition, much less a right of revolution” and concludes that “It is the people’s duty to endure even the most intolerable abuse of supreme authority” (MPJ 6:320). In “On the Common Saying: ‘This May be True in Theory, but it does not Apply in Practice,’” Kant says:

all resistance against the supreme legislative power, all incitement of the subjects to violent expressions of discontent, all defiance which breaks out into rebellion, is the greatest and most punishable crime in a commonwealth, for it destroys its very foundations. This prohibition is absolute. And even if the power of the state or its agent, the head of state, has violated the original contract by authorizing the government to act tyrannically, and has thereby, in the eyes of the subject, forfeited the right to legislate, the subject is still not entitled to offer counter-resistance. (TP 8:299)

related to that of the good person who takes the law into his own hands. For example, there is the hotdog cop, who uses irregular methods to catch bad guys. He doesn’t take the law into his own hands on some particular occasion, but rather lives that way. Indeed, we are fascinated by the police in general, who, as Nietzsche points out, use all the same methods as criminals (*The Genealogy of Morals*, p. 82). Then there’s the revenge film hero, who is, so to speak, released from the usual restraints of morality by a terrible crime committed against someone in his family. As we go down this list, a more deflationary account of the source of our pleasure becomes more plausible—the hero’s plight serves merely to give us a kind of permission to enjoy the spectacle of violence wholeheartedly. But that’s not what’s going on in the cases mentioned in the text; and I think that an explanation of the phenomenon I discuss in the text should throw some light on the various pleasures we take in some of these stock figures.
And yet if a revolution succeeds, Kant thinks, the new government immediately becomes legitimate. In the *Metaphysical Principles of Justice* he writes:

if a revolution has succeeded and a new constitution has been established, the illegitimacy of its beginning and of its success cannot free the subjects from being bound to accept the new order of things as good citizens, and they cannot refuse to honor and obey the suzerain who now possesses the authority. (MPJ 6:323)

So even a regime newly established by an overthrow may not in turn be overthrown.

This may make it seem as if Kant were trying to defend quietism at any cost. And yet when Kant looked to history for a sign that would show whether the human race was making moral progress, he found encouragement in a phenomenon of his own day: the enthusiasm of the spectators of the French Revolution. In his essay “An Old Question Raised Again: Is the Human Race Constantly Progressing?” Kant writes:

The revolution of a gifted people which we have seen unfolding in our day may succeed or miscarry; it may be filled with misery and atrocities to the point that a sensible man, were he boldly to hope to execute it successfully the second time, would never resolve to make the experiment at such cost — this revolution, I say, nonetheless finds in the hearts of all spectators (who are not engaged in the game themselves) a wishful participation which borders on enthusiasm, the very expression of which is fraught with danger; this sympathy, therefore, can have no other cause than a moral disposition in the human race. (OQ 7:85)

Granted, it is the spectators, not the revolutionaries themselves, whose enthusiastic sympathy Kant thinks testifies to our moral nature. But if revolution is wrong, how can “wishful participation” in it be right? And we know that Kant himself was one of the most enthusiastic of these wishful participants. His personal obsession with both the French and the American Revolutions, his constant eagerness for the latest news from France, his persistent championship of the French Revolution even in the face of the Terror, won him the nickname “the Old Jacobin.” Indeed, according to one report, “he said that all the horrors in France were unimportant compared with the chronic evil of despotism from which France had suffered, and the Jacobins were probably right in all they were doing.”⁵ Kant not only could sympathize with those aroused to violence by injustice; he could even cheer for them.

So here we have Kant’s three views: revolution is unconditionally wrong; yet if it succeeds the government it establishes is a legitimate authority to which citizens owe their obedience; and, finally, our enthusiasm for the French

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Revolution, even our wishful participation in it, is an outward sign of the presence of a moral disposition in our nature, from which we may derive hope for our own moral progress. In what follows, I will try to show how this trio of views can make sense.

3. Justice and the Political State

Some background is necessary to my account. In the *Metaphysics of Morals*, Kant distinguishes two kinds of duties: duties of virtue and duties of justice (MM 6:218–221). Duties of justice are derived from the “Universal Principle of Justice” (MPJ 6:230), a restricted version of the categorical imperative. The Universal Principle of Justice tells us to act in a way that is compatible with the freedom of everyone according to a universal law (MPJ 6:231). Everyone is to have equal freedom of action, and the duties of justice are duties to avoid actions that violate that condition. According to Kant, the duties of justice are external duties. They are duties to perform or avoid certain outward acts. Insofar as a given action is regarded as a duty of justice, the duty is just to do it. The doctrine of right, in which the duties of justice are studied, is completely unconcerned about our motives. The sense in which the duties of justice are duties is cashed out entirely in terms of the fact that if you attempt to violate a duty of justice, others have the right to use force or coercion to stop you (MPJ 6:231). In the sphere of law and justice, “this is your duty” means “we have the right to demand this of you.” This stands in sharp contrast to the sphere of ethics, which concerns the duties of virtue. There “this is your duty” means “insofar as you are autonomous, you demand this of yourself” (see MM 6:379–380).

Why is it permissible for others to force or coerce you to conform to the duties of justice? The Universal Principle of Justice in effect says that the only restriction on freedom is consistency with the freedom of everyone else. Anything that is consistent with universal freedom is just, and you therefore have a right to do it. If someone tries to interfere with that right, he is interfering with your freedom and so violating the Universal Principle of Justice. Violations of the Universal Principle of Justice may be opposed by coercion for the simple reason that anything that hinders a hindrance to freedom is consistent with freedom, and anything that is consistent with universal freedom is just. It follows that rights are coercively enforceable. Indeed, coercive enforceability is not something attached to rights; it is constitutive of their very nature (MPJ 6:232). To have a right just is to have the executive authority to enforce a certain claim. This in turn is the foundation of the executive or coercive authority of the political state.
Kant’s political philosophy is a social contract theory, in obvious ways in the tradition of Locke. But the differences are important. In Locke’s view, individuals have rights in the state of nature, and may enforce those rights. But when each person determines and enforces his own rights the result is social disorder. Since this disorder is contrary to our interests, people join together into a political state, transferring our executive authority to a government.\(^6\)

Kant also believes that there is a sense in which we have rights in the state of nature. We have a natural right to our freedom (MPJ 6:237), and, Kant thinks, the Universal Principle of Justice allows us to claim rights in land and, more generally, in external objects, in property. Kant argues that it would be inconsistent with freedom to deny the possibility of property rights, on the grounds that unless we can claim rights to objects, those objects cannot be used (MPJ 6:246).\(^7\) This would be a restriction on freedom not based in freedom itself, which we should therefore reject, and this leads us to postulate that objects may be owned. But unlike Locke, Kant argues that in the state of nature these rights are only “provisional” (MPJ 6:256). In this, Kant is partly following Rousseau. In contrast to Locke, Rousseau argues that rights are created by the social contract, and, in a sense, relative to it. My possessions become my property, so far as you and I are concerned, when you and I have given each other certain reciprocal guarantees: I will keep my hands off your possessions if you will keep your hands off mine.\(^8\) Rights are not acquired by the metaphysical act of mixing one’s labor with the land, but instead are constructed from the human relations among people who have made such agreements.\(^9\) Kant adopts this idea, at least as far as the executive authority

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\(^6\) Locke, The Second Treatise of Government: An Essay Concerning the Original, Extent, and End of Civil Government. For the discussion of rights in the state of nature, see chapter 2; for our reasons for leaving the state of nature, see chapter 9.

\(^7\) Why must things be property in order for us to use them? In the case of immediate consumables, it is of course true that by using them we make them our own—we make them part of ourselves in the most literal way, so that interfering with our use of them becomes in the most literal way interfering with ourselves. If we could not make them our own in this way, we could not use them. In the case of “the means of production” a simpler and more practical argument can be made—we cannot make effective use of them without some guarantee that they will be reserved for us exclusively during the time of use, since, for example, I cannot effectively grow corn in the same field where you are trying, at the same time, to grow barley. It is worth pointing out that this argument, if it works, does not establish the necessity of “private property” in any controversial sense; it establishes only that the means of production and action must be reserved to the exclusive use of certain individuals in certain times and places. This applies even to things owned communally—for instance, library books are reserved to particular patrons for specified amounts of time. Your right to the exclusive use of a book, for reading only, and for a certain length of time, still counts as a form of “property” in Kant’s sense. In the same way, the means of production might be communally owned and “lent out” to particular users.


\(^9\) Of course it may be argued that Lockean rights also depend on human relationships, because of the proviso that the laborer should leave “enough and as good” for others, which seems to substitute
associated with a property right is concerned. I may indeed coercively enforce my rights. But if my doing so is to be consistent with the Universal Principle of Justice, it cannot be an act of unilateral coercion. To claim a right to a piece of property is to make a kind of law; for it is to lay it down that all others must refrain from using the object or land in question without my permission. But to view my claim as a law I must view it as the object of a contract between us, a contract in which we reciprocally commit ourselves to guaranteeing each other’s rights. It is this fact that leads us to enter—or, more precisely, to view ourselves as already having entered—political society.

In making this argument, Kant evokes Rousseau’s concept of the general will. He argues that a general will to the coercive enforcement of the rights of all concerned is implicitly involved in every property claim.

Now, with respect to an external and contingent possession, a unilateral Will cannot serve as a coercive law for everyone, since that would be a violation of freedom in accordance with universal laws. Therefore, only a Will binding everyone else—that is, a collective, universal (common), and powerful Will—is the kind of Will that can provide the guarantee required. The condition of being subject to general external (that is, public) legislation that is backed by power is the civil society. Accordingly, a thing can be externally yours or mine [that is, can be property] only in a civil society. (MPJ 6:256)

It is because the idea of the general will to the reciprocal enforcement of rights is implicit in any claim of right that Kant argues that rights in the state of nature are only provisional. They are provisional because this general will has not yet been instituted by setting up a common authority to enforce everyone’s rights. The act that institutes the general will is the social contract.

Kant concludes from this argument that when the time comes to enforce your rights coercively, in the state of nature, the only legitimate way to do that is by joining in political society with those with whom you are in dispute. In fact, you enforce your right by first forcing them to join in political society with you so that the dispute can be settled by reciprocal rather than unilateral coercion:

If it must be de jure possible to have an external object as one’s own, then the subject must also be allowed to compel everyone else with whom he comes into conflict over the question of whether such an object is his to enter, together with him, a society under a civil constitution. (MPJ 6:256)

Suppose we are in the state of nature and we get into a dispute about rights. My goat has kids, and I take them to be mine because I was caring for the for making agreements with others. But Locke seems to take it for granted that this proviso not only can be but also is met, whereas the relationships on which rights are built in the accounts of Kant and Rousseau are ones that people must actually enter into. See Locke’s Second Treatise, chapter 5.
mother goat when they were born. However, one of them escaped, and you found it wandering around apparently unowned in the state of nature, took possession of it, fed it and cared for it for many years. Now we have discovered the matter, and each of us thinks she has a right to this particular goat. Since I think I have a right, I also think I may prosecute my right by coercive action. And you think the same. So what can we do? Perhaps I have a gun and you do not, so I can simply take the goat away from you. However, there are two ways to understand my action. One is: I am using unilateral force to take the goat away from you. Such an action would be illegitimate, a use of violence which interferes with your freedom. I cannot regard my action as an enforcement of my right without acknowledging that you have rights too, which also must be enforced. So if I am to claim that what I am doing is enforcing my right, I must understand my own action differently. The other way to understand the action is that I am forcing you to enter into political society with me. That gets us to the first step; the act of enforcing my right involves the establishment of a juridical condition (rechtlicher Zustand) between us and so establishes civil society. The second step, of course, is to settle the particular dispute in question in some lawful way.

This means that Kant’s conception is different from Locke’s in important ways. According to Kant a juridical condition—a condition in which human rights are upheld and enforced—can only exist in political society. And therefore existence in political society is not merely, as Locke had it, in our interest. It is a duty of justice to live in political society. That is to say, others have the right to require this of you, because that is the form that their authority to enforce their own rights takes. And you, reciprocally, have the right to require membership in political society of others with whom you might have such disputes. Since we will that our rights be enforced, reciprocal coercion, and therefore political society, can be seen as the object of a general will.

Kant does not take himself to be telling a historical story. He is answering a transcendental question: how is coercive political authority possible? His answer is that the idea of a general will to the reciprocal enforcement of rights is what makes coercive political authority possible. Governments are legitimate because human beings who live in proximity, who must therefore work out what their respective rights are, must form a general will. To put it another way, justice, which is the condition in which we have guaranteed one another our rights, only exists where there is government. Government, then, is founded on our presumptive general will to justice.
4. All Governments are Legitimate

Kant’s account of the state, as I have just said, is transcendental: it is an account of how political authority is possible. But of course we need to know something more than that: we need to know when political authority is actual. Which regimes are legitimate governments, and which are mere Mafias ruling the people by main force? Kant’s view is that all governments should be taken to be legitimate. That is, any regime’s decisions are the voice of the general will of its people; and its procedures for making those decisions must be taken to be ones the people have agreed to.

Kant of course does not mean that all governments and all of their decisions are perfectly just. In fact, Kant thinks that his theory of the political state implies an ideal of the state that is not generally realized. The state must embody the general will of the people to the reciprocal enforcement of those rights which constitute the freedom of everyone. In order to do this, Kant argues, the state must be a republic, characterized by a constitution and by the separation of powers, in which legislation is carried on by representatives of the citizens. Although Kant has some negative things to say about “democratic” government, these must be understood in terms of his rather complex account of political authority. Kant asserts that, “legislative authority can be attributed only to the united Will of the people” (MPJ 6:313). This authority is then invested in a sovereign authority or ruler, which may be constituted by all, some, or one of the people (MPJ 6:338–339; PP 8:352), making the form of sovereignty democratic, aristocratic, or autocratic respectively. Members of the sovereign are citizens and must therefore be fit to vote (MPJ 6:314); Kant criticizes the autocratic form of sovereignty, which concentrates it in a single person’s hands, because “none of the subjects are citizens” (MPJ 6:339). The sovereign is responsible for administering the government. If the sovereign “himself” carries out all three functions of government directly, the government is despotic; if, however, the sovereign adopts a constitution establishing legal and institutional forms through which it performs the three functions of government separately, then the government is republican.¹⁰ A republican constitution,

¹⁰ Following Rousseau, Kant argues that a republican constitution must provide for the separation of the three powers, since when they are united in one person the state is effectively despotic (MPJ 6:316–319; PP 8:352). Rousseau argues that legislation must be couched in general terms, while it is the business of the executive to apply the law to particular cases (see On the Social Contract, Book 2, chapter 4). This makes it easy to see why unification of the powers leads to despotism. Suppose we
Kant says, is the “one and only legitimate constitution” (MPJ 6:340) since it is “the only enduring constitution in which the law is autonomous and not annexed to any particular person” and in which therefore “each person receives his due peremptorily” (MPJ 6:341). In a republican constitution, that is, every person is bound by the law and so one’s rights do not depend on anyone’s (not even the majority’s) will. And therefore:

Every true republic is and can be nothing else than a representative system of the people if it is to protect the rights of its citizens in the name of the people. Under a representative system, these rights are protected by the citizens themselves, united and acting through their representatives (deputies). As soon, however, as the chief of state in person (whether it be a king, the nobility, or the whole population—the democratic union) allows himself to be represented, then the united people do not merely represent the sovereign, but they themselves are the sovereign. (MPJ 6:341)

Once such constitutional forms are established, the united people no longer have to invest the sovereignty in any other “person,” not even the collectivity of the whole people themselves. Instead the people govern themselves directly through their constitutional forms. Outwardly, of course, somebody must administer the functions of government, but those who do so are now regarded as magistrates who work for the people, not as sovereign authorities. The magistrate who runs the government may still be a “monarch,” and Kant sometimes suggests that he thinks this is the best arrangement (PP 8:352–353). Yet it seems clear enough that this ideal requires that the magistrates be responsive to the demands of the people. For instance, Kant argues that the establishment of republican forms of government will bring war to an end, because a declaration of war will require “the consent of the citizens,” who are unlikely to give it (PP 8:351). This result seems to depend on the idea that the citizens will have some actual influence on the political process. Thus Kant’s ideal state appears to be most closely realized by our own modern constitutional “democracies.” Legislation is to be carried on by more or less direct delegates of the citizens, while the other functions of government are to be separated from the legislative function and the magistrates who perform all legislate by majority vote, and suppose that the majority would like to institute a majority religion as the official church of the state. In their capacity as legislators, they cannot name a particular religion, but they could make a law that, say, everyone is to practice the one true faith. It will be left to the executive to determine which faith that is. Under these circumstances, it is plausible to suppose that individual citizens would have reason not to vote for such a law—the same sorts of reasons that the parties in Rawls’s original position have for upholding freedom of conscience (see John Rawls, Political Liberalism, pp. 310–15). But now suppose that the majority is also the executive, who will choose the one true faith. Then they can make the law in question with impunity. In this way the unification of the legislative and executive powers makes democracy degenerate into a form of despotism—the tyranny of the majority.
three functions are to understand themselves as representing the united will of the people.¹¹

Why then does Kant think we must treat every regime, and all of its decisions, as the voice of the general will? To understand this, we need to consider Kant’s responses to two possible challenges to the legitimacy of a government, one based on its history—on the illegitimacy of its origins—and the other on its present imperfections, as measured by the ideal.

Start with the historical challenge. I have already said that Kant is not proposing that there was an actual contractarian origin to the state. His social contract is a hypothetical or, perhaps better, a transcendental one, which explains how such things as governments are possible. Kant signals this by grounding the state in what he calls a “postulate.” Earlier in the *Metaphysical Principles of Justice*, Kant had also grounded the possibility of property in a postulate. The notion of a postulate is introduced in the *Critique of Practical Reason*, in connection with Kant’s account of practical religious faith. Suppose we have some rational concept, but we do not have theoretical grounds for assigning it “objective reality”—that is, for asserting that it could apply to any actual object. In some cases, we may nevertheless have practical grounds for doing so, based on the considerations that (1) moral practice is intelligible or possible only if we assume that this concept has objective reality, and (2) moral practice is absolutely obligatory. In the second Critique, this is our basis for assigning objective reality to God, Freedom, and Immortality, concepts that cannot be applied theoretically because their objects could not be part of the sensible world (C2 5:119–146).¹² In the *Metaphysical Principles of Justice*, Kant argues that both “property” (or right) and “government” are moral or normative, and so intelligible or rational rather than sensible or empirical, concepts. Empirically, all we can identify is *possession* in the one case and *ruling power* in the other: people have certain objects in their possession, or under their control, and some people rule over others. Yet it is essential for moral practice, as we have seen, that we treat some of these empirical relations as having normative force—that we treat some possessions as rightful property, and some cases of ruling power as cases of legitimate political authority. For we cannot have freedom without property rights, and we cannot have rights without government. The “*Juridical Postulate of Practical Reason*”

¹¹ In reconstructing Kant’s complex account of these matters, I have draw on the discussion in Howard Williams, *Kant’s Political Philosophy*, pp. 173–8.

¹² Kant argues that morality requires us to make the “Highest Good”—a state of affairs in which we all attain a virtuous disposition and happiness proportionate to that disposition—the end of our moral practice, and that we cannot conceive how such a state could be brought about unless God exists and we are immortal. We are therefore licensed to postulate that these things are so.
(MPJ 6:246) and the “Postulate of Public Law” (MPJ 6:307) establish the objective reality of rights and government respectively.

In contrast to the religious postulates, however, these postulates license us to assign their concepts to objects we encounter in the natural world. And in both cases, a problem springs from the fact that the concept invokes a kind of hypothetical history. Kant’s account of the possibility of property follows the usual strategy of appealing to the legitimacy of an individual’s taking first possession of some land in the state of nature, rightfully laying claim to an object hitherto unowned. The individual then of course has the right to transfer this property to others. This kind of story can make it seem as if the correctness of a property-claim depends on an object’s entire history and ancestry. Ownership in an object must be the result of a series of legitimate transactions stretching all the way back to the beginning of human history, when someone took first possession of the land.

Suppose someone challenges my right to a book. I say it’s mine, but he say it’s not; it’s stolen property. He doesn’t mean that I stole it; but that there’s an illegitimate move somewhere in its history. Imagine that a congress of Native Americans demands that immigrant Americans return all of the books made from paper made from American trees to them. They say: you stole the forests, and the forests were ours; so the paper is ours; and the books are ours. And of course they’ve got a point. If we traced the ancestry of the property each of us owns, it would be full of illegitimate transactions. No one would be found to be the legitimate owner of anything. The history of the human race is a history of war and looting and theft and violence, not a history of legitimate transactions. So here’s what we do. We simply take it for granted that, generally speaking, what people now have is their property. And we try to ensure that, from here on in, transactions will be legitimate and just.¹³

Kant thinks that this is what we should do with governments too. We should take it for granted that the existing governments are legitimate representatives of the general will of the people who are ruled by them, as if they originated in social contracts. “One ought to obey the legislative authority that now exists regardless of its origin” (MPJ 319). Kant says in several places that it is criminal even to research the origin of a government if you do it with an eye to challenging its legitimacy (MPJ 6:318–319; 6:372). Now of course there is also an important difference between the two cases. Kant thinks that if a revolution succeeds, we should take it that the new government is legitimate.

¹³ Kant does not say this directly, but he appeals to considerations of exactly this kind in explaining why in civil society we take long possession to establish a property claim (MPJ 6:292–293) and how we deal with cases in which someone has come into possession of stolen property (MPJ 6:302–303).
The policy of treating any extant political power as legitimate is an absolutely blanket one. But of course if a theft or a swindle succeeds, we do not take it that the new distribution of property is legitimate. We do trace ownership back in time, within limits. But there is also an obvious explanation of this disanalogy. When someone is accused of stealing property, there is a duly constituted authority, namely the state itself, to decide the case. So this kind of conflict can be handled in a just manner. But of course, after a revolution, there is no duly constituted authority to settle the question whether the old government or the new government is legitimate. The question which one is legitimate just is the question what the general will of the people is. And that, of course, can be settled only by consulting the true government, the voice of the general will, which is exactly what is at issue here.

Now we come to the second possible kind of challenge. Even if we don’t deem governments illegitimate because of their histories, we might challenge the legitimacy of those that fall short of the republican ideal to which the idea of government points us. Kant also argues against doing this. In an appendix attached to later editions of *The Metaphysical Principles of Justice*, Kant quotes a reviewer, Friedrich Bouterwek, who among other things called it “the most paradoxical of all paradoxes” that “the mere Idea of sovereignty should necessitate me to obey as my lord anyone who has imposed himself upon me as a lord, without my asking who has given him the right to command me” (MPJ 6:371). And Kant replies:

Every matter of fact is an object that is an appearance (of sense); on the other hand, that which can be represented only though pure reason and which must be included among the Ideas—that is the thing in itself. No object in experience can be given that adequately corresponds to an Idea. A perfect juridical [just] constitution among men would be an example of such an Idea. (MPJ 6:370; my emphasis)

The claim is that no existing government adequately corresponds to the idea of a government. And yet:

When a people are united through laws under a suzerain, then the people are given as an object of experience conforming to the Idea in general of the unity of the people under a supreme powerful Will. Admittedly, this is only an appearance; that is, a juridical constitution in the most general sense of the term is present. Although the [actual] constitution may contain grave defects and gross errors and may need to be gradually improved in important respects, still, as such, it is absolutely unpermitted and culpable to oppose it. If the people were to hold that they were justified in using violence against a constitution, however defective it might be, and against the supreme

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¹⁴ According to Kant himself, the review appeared in the *Göttingen Journal*, number 28, February 18, 1797.
authority, they would be supposing that they had a right to put violence as the supreme prescriptive act of legislation in the place of every right and Law. (MPJ 6:371–372)

There are two possible ways to understand this argument. One might read it, first, as a kind of slippery slope argument. Suppose that Kant is correct in saying that no extant government meets the ideal. If we then ask how close a government must come to the ideal before it counts as legitimate, there is no obvious place to draw the line. If we look for a minimum criterion of legitimacy, we find that the most natural one—universal adult suffrage—rules out nearly every “government” that has existed in the history of the world before the twentieth century.¹⁵ So perhaps Kant thinks it is too dangerous to make such judgments.

This reading, however, does not sit well with the obviously Platonic character of the passage.¹⁶ When Kant says that actual governments are only “appearances” he does not mean that they are not real. He means that they are imperfect participants, in the Platonic sense, in the form of justice, a form that is given by the ideal of the republic described earlier. When Kant contrasts autocracy, aristocracy, and democracy to the true form of government, he even calls them “those old . . . empirical forms of the state” in contradistinction to the “original (rational) form” which is the republic (MPJ 6:340). Kant is clearly confident that, despite their imperfections, we recognize these objects as governments, as imperfect approximations to a perfect form.¹⁷

In order to understand why, it helps to reflect that there is a kind of tension inherent in our very concept of justice: a tension between what I will call the procedural and the substantive elements of the concept. On the one hand, the idea of justice essentially involves the idea of following certain procedures. In the state, these are the procedures by which the three functions of government are carried out. In order to be just, any sort of decision, outcome, or verdict—any political judgment—must be the result of our actually following these procedures. That is a law which has been passed in form by a duly constituted legislature; this law is constitutional if (say) the supreme court says that it is; a person is innocent of a certain

¹⁵ This criterion seems called for by Kant’s account of citizenship as fitness for voting. Kant himself attempted to argue that some adults—apprentices, servants, and “all women”—could still count as “passive citizens” even though we are (rightly, according to Kant) not allowed to vote because of our “dependence” on others. But, in a textually rather unsteady moment, he also conceded that this is only legitimate if the laws chosen by the active citizens allow “everyone” to “work up” from a passive to an active status (MPJ 6:314–315).
¹⁶ Kant himself associates his use of the terms “Idea” and “Ideal” with Platonic forms at C1 A313/B370 ff., and A568–569/B596–597; and, in the earlier discussion, he explicitly compares his own idea of a republic to Plato’s (C1 A 316/B373).
¹⁷ See Plato, Phaedo 74a–76a, and Republic, especially Books 2–4.
crime when he has been deemed so by a jury; someone is the president if he meets the qualifications and has been duly voted in, and so forth. These are all normative judgments—the terms I have italicized imply the existence of certain reasons for action—and the normativity of these judgments derives from the procedures that have established them.

On the other hand, however, there are many cases in which we have an independent idea of how these procedures ought to turn out. These independent criteria form our more substantive judgments—in some cases, of what is just, in other cases, simply of what is right or best. Perhaps the law is unconstitutional, though the legislature has passed it; perhaps the defendant is guilty, though the jury has set him free; perhaps the candidate elected is not the best person for the job, or even the best of those available, or perhaps due to the accidents of voter turnout he does not really represent the majority will. As this last example shows, the distinction between the procedurally just and the substantively just, right, or best, is a rough and ready one, and relative to the case under consideration. Who should be elected? The best person for the job, the best of those who actually run, the one preferred by the majority of the citizens, the one preferred by the majority of the registered voters, the one elected by the majority of those who actually turn out on election day . . . ? As we go down the list, the answer to the question becomes increasingly procedural; the answer above it is, relatively, more substantive. We may try to design our procedures to secure the substantively right, best, or just outcome. But—and here is the important point—the normativity of these procedures nevertheless does not spring from the efficiency, goodness, or even the substantive justice of the outcomes they produce. The reverse is true: it is the procedures themselves that confer normativity on those results. The person who gets elected holds the office, no matter how far he is from being the best person for the job. The jury’s acquittal stands, though we later discover new evidence that the defendant was guilty after all. And the normativity of the procedures themselves springs not from the quality of their outcomes but rather from the fact that we must have such procedures if we are going to form a general will. In order to act together—to make laws and policies, apply them, enforce them—in a way that represents, not some of us imposing our private wills on others, but all of us acting together from a collective general will—we must have certain procedures that make collective decision and action possible, and, normatively speaking, we must stand by their actual results.

This point has some weight in any collective decision—even when we make a decision, say, with a group of friends. But it applies most forcefully to cases of right and justice, to decisions backed by coercive authority. For if we reserve to ourselves the right to ignore the outcomes of such procedures
when we believe them to be substantively wrong, then we are still in the state of nature. And this idea is reflected in our actual practice, leaving Kant aside, for it is a basic rule of citizenship, of living in accordance with the rule of law, that procedural judgments have a coercive normative force against which substantive ones have no weight at all. Your judgment that a law is stupid does not excuse disobedience; your conviction that the defendant is guilty does not justify a lynching; your belief that your candidate is the better man is no grounds whatever for a takeover.

When the substantive ideal that opposes the procedural outcome is also an ideal of justice itself, and not merely one, say, of efficiency or qualification, this gives rise to a tension. It’s bad enough when the jury lets the guilty go free, but suppose you are sure they have convicted the innocent. The law passed by congress is not just stupid or inefficient or incoherent, but—you think—plainly unconstitutional; only the supreme court, called upon to decide the case, does not agree with you here. Where then does justice lie? When we are judging the very institutions of government themselves, this kind of tension can rise to the level of paradox, illustrated by a simple example. Suppose we are convinced that the idea that government should represent the general will of the people requires that some group of people, hitherto helplessly subjected to a powerful tyrant, be allowed to choose their own political institutions in a democratic election. And suppose that having been liberated from their tyrant and allowed to vote for their political institutions, they unanimously vote the democracy out, and their tyrant right back in again. Where now does justice lie? Shall we force upon these people a form of government they do not choose to have, in the name of respecting their general will?¹⁸ We may be convinced, and for good reasons, that constitutional democracy is the best way for a people to express its general will. But the absence of democratic institutions cannot be taken as proof or even as evidence that a government does not represent the general will of its people.

“When a people are united through laws under a suzerain, then the people are given as an object of experience conforming to the Idea in general of the unity of the people under a supreme powerful Will” (MPJ 6:371–372). What makes a people unified is that there are procedures under which they are unified, procedures that make collective decision and action possible, and give

¹⁸ Kant himself says, “Even if the sovereign were to decide to transform himself into a democracy, he would still be doing the people an injustice, because the people themselves might abhor this kind of constitution and might find that one of the other two was more advantageous for them” (MPJ 6:340). Of course Kant is talking here not about whether the state should be a republic, but about which of the three “empirical” forms it should take. The remark raises odd problems about whether Kant thinks there is any legitimate way for a state to change its basic form of government, but I leave those aside here.
them a general will. Kant’s view is that wherever we see such an arrangement, we see an imperfect empirical realization of the form of justice, of the idea of a general will. If someone has enough authority to make and execute laws, and the people are living and acting and relating to one another under those laws, then that is their general will. The failure of their institutions to meet our more substantive ideals of justice is simply irrelevant.

It’s worth pointing out that, in the international sphere, we accept this conclusion. Although we may agree with Kant that the modern constitutional democracy is the substantively best form of government, we do not think that this licenses us to impose it on other nations, or even to refuse recognition to those who neither have nor aspire to this ideal. It would, for the reasons just given, be not just wrong, but paradoxical, since the very idea embodied in the ideal of constitutional democracy is that government should be by the consent of the governed, or an expression of the general will. That idea demands that we recognize that the peoples of other nations must decide for themselves what kind of political institutions they will have. If we are to recognize them as sovereign states at all, we must simply take it that their governments are expressions of their general wills.

To arrive at Kant’s position you need only see that the individual subject, when considered only as a private individual with his own private ideas about what constitutes good government, is in exactly the same position as an outsider towards his own government. He must acknowledge its procedures, as they stand, to be the expression of the general will, if he is to see his country as having a general will and so a government at all. And according to Kant he must see himself as living under a government because, as we saw earlier, it is our duty to live in political society.

5. Why There is No Right to Revolution

Since Kant thinks that any government represents the general will of the people, his argument against the right to revolution is an immediate, simple, conceptual one. He says:

For in order for the people to be able to judge the supreme political authority with the force of law, they must already be viewed as united under a general legislative

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19 When thinking about the terms on which we interact with other nations, as when thinking about the terms on which we interact with other people, it is important to distinguish two different issues: one is whether you disapprove of the way they go on, and the other is whether the way they go on prevents you from interacting with them on terms that are honorable in your own eyes.

20 As a citizen, rather than merely as a subject, he is sometimes entitled to act on his own substantive views. For instance, they determine who and what he votes for. But the cases in which he is permitted in this way to act on his private views must be constitutionally defined.
Will; hence they can and may not judge otherwise than the present chief of state will. (MPJ 6:318)

The point is plain. The government is the representative of the general will. But if it represents the general will, whatever it says is the voice of the general will. To revolt, where that means to oppose the decisions of the government, is therefore to oppose the general will. And to oppose the general will is to dissolve the juridical condition among human beings, and so to return to the state of nature. Revolution “is not an alteration of the civil constitution, but the dissolution of it” (MPJ 6:340). This is wrong, for, as we have seen, Kant thinks that living in political society is not, as Locke thought, a mere remedy for inconvenience, but instead is a duty of justice.

However paradoxical it seems, this argument has real force. If government exists by the general will, a revolution could only be legitimate if it in turn were in accordance with the general will. Otherwise, it is just a few lawless individuals making war against the nation. But we should ask how it could be established that a revolution is in accordance with the general will. Kant’s argument shows how serious this problem is. The government contains agencies for both determining and interpreting what the general will is. Of course the people may decide that the government is not doing a good job of this. But this judgment can only be made by someone who has the right to speak for the people, and that right belongs to the government itself. Therefore, the government can reform itself, but the people as subjects cannot reform the government.

The problem arises because the will of the people must be represented. A people cannot literally speak with one voice. They must speak through a representative who has their mandate. What makes the problem of revolution so acute is that what is in question here is who represents the people. And the people cannot literally speak with one voice about this any more than they can about anything else. Until we settle the question who represents the people the general will has no voice to speak with. So we cannot start with the will of the people; to know what the will of the people is, we must start with someone taken to be their representative, their voice. This can make it seem strangely arbitrary who we take to represent them. Kant’s solution to this problem is to say that the representative of the people just is the extant government, whatever it is.

If we accept Kant’s solution, a revolution is necessarily opposed to the general will and so it is illegitimate. To see this, imagine the best possible case for revolution. Suppose we have a small nation ruled by a single tyrant and his army. The revolutionary, hoping to establish legitimacy, assembles

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21 Hobbes makes essentially the same argument in Leviathan, chapter 18.
the entire population and takes a vote. Everyone except the dictator and his army votes for a new regime. If the dictator does not bow out, do the people have the right to revolt? The answer is no. In this country, the procedure for determining the general will is to consult the dictator, not to take a vote. Votes can only determine what the general will is where they are the duly constituted procedure for determining the general will. So for these people to revolt on the basis of this vote would be a raw act of the tyranny of the majority over the minority. The majority only represents the general will where it has been established that they do; and, in this case, it has not.

Kant’s argument, as I’ve suggested, depends on a deeply procedural conception of the general will. Our general will, according to this argument, just is whatever follows from the procedures that make collective action possible, and so, in Rousseau’s extravagant language, it can do no wrong.²² Suppose we allow, instead, that there is such a thing as the general will, independently of our procedures, and that our procedures should be viewed as a fallible device for ascertaining it. Then we can allow, contrary to Kant, that the extant regime may not represent the will of the people and so may fail to be legitimate. Even so, we get the problem. It is still true that the people cannot speak as a people until they have a voice. A revolutionary who claims to be the representative of the people merely because of the spirit he senses among them or even because he has taken a favorable vote is misdescribing the situation. The people can only give their mandate through some duly constituted voice, through someone who has the right to represent them. If we admit the possibility that the extant regime does not represent the general will then there is no way to tell what the general will is. The general will has lost its voice, and there are only two ways to make it speak again. One is if the people arrive at actual unanimity—in which case, of course, there could be no need for revolution, since the people of a nation include its governors. The other is by the essentially arbitrary choice of a representative. So even if we grant the possibility that a government might be illegitimate, we can never say that the revolution is in accordance with the general will. Now all we have is a raw clash of arbitrary powers at war with each other in a world without justice. We have still not established that revolution is something to which there could be a right.

6. What Follows from the Fact that There is No Right to Revolution

Let’s say Kant has made his case. There is no right to revolution. What follows?

It follows from the fact that there is no right to revolution that there is a duty not to revolt. This duty is a duty of justice. It is important now to recall what this means. A duty of justice is a duty in the sense that others may coercively require your performance. To say that something is a duty of justice is to say that its violation is punishable. So the first thing that follows is that if you participate in a revolution, it fails, and you are caught, you may be punished. As Kant says, revolution is the “most punishable crime in a commonwealth, for it destroys its very foundations” (TP 8:299). So far, this is unproblematic. It would be extraordinary to believe that people may not be punished for revolting. Of course if people get out their guns and shoot at others and make mayhem in society they may be punished. The fact that their motives were political rather than venal may make us judge them less harshly as human beings, but for all that they may be punished.

The whole point of a government is to enforce people’s rights in a way that is orderly and grounded in reciprocal coercion, rather than in a disorderly and unilaterally coercive way. Executive authority is supposed to be concentrated in a government; and so the idea of a government which is not allowed to enforce its own decisions is incoherent. As Kant himself points out, a right to revolution would involve a kind of contradiction, rather like the Liar’s Paradox: “the supreme legislation would have to contain a stipulation that it is not supreme” (MPJ 6:320).

There is also a second consequence, which follows from Kant’s views about responsibility for actions and their consequences. Kant argues that one must do what the moral law demands, let the consequences be what they may. If you

23 For Kant’s own reflections on this point, see note 27 below.

24 One standard response to this point is that it only shows that there cannot be a legal right to revolution, but not that there cannot be a moral right. Kant’s system makes no use of any distinctive category of moral right; for him, a right is by definition the kind of moral claim that can legitimately be coercively enforced and so can be legalized. There are claims in Kant’s system that it is tempting to identify with moral rights. Kant distinguishes duties of justice from duties of virtue on the grounds that the former are, and the latter are not, both legitimate and possible to enforce coercively. We may not force people to be virtuous because virtue is a matter of inner motives and attitudes, and your having a bad attitude towards me does not hinder my freedom. But we also cannot force people to do the duties of virtue, because we cannot control the motives from which they act. Yet one of the duties of virtue—the duty to respect others, seems to be a perfect duty and seems to establish a kind of claim, so that we might say that we have a moral right to the respect of others. This will not help us here, however. It is, though, related to what I take to be the most plausible grounds for claiming a “moral right” to revolution, namely, exclusion from full citizenship on arbitrary grounds. The most extreme case is that of slaves, but victims of apartheid, and Kant’s so-called passive citizens (see note 15 above) may also plausibly claim that the general will is not their will, that they have been left outside of the commonwealth. So let me just say that the case of the conscientious revolutionary that I will shortly examine, the one I think morally interesting, is not that of someone who himself can plausibly claim to be excluded from the commonwealth, but rather someone who is part of the commonwealth but objects to its actions. One obvious reason why he might object is that some others are arbitrarily excluded.
do what is required of you, you are not responsible for the consequences. On the other hand, if you do something other than what the moral law demands, then you are responsible for the consequences. In the *Metaphysics of Morals*, Kant says:

The good or bad results of an action that is owed, like the results of omitting a meritorious action, cannot be imputed to the subject (*modus imputationis tollens*).

The good results of a meritorious action, like the bad results of a wrongful action, can be imputed to the subject (*modus imputationis ponens*). (MM 6:228)

In other words, if you do your perfect duties, you are not responsible for the results; if you do an imperfect duty, such as helping someone, you count as the author of the good result; and if you violate perfect duty and the results are bad, the consequences are on your head. In the *Lectures on Ethics*, Kant puts the point more simply:

If we do either more or less than is required of us we can be held accountable for the consequences, but not otherwise—not if we only do what is required, neither more nor less. (LE 59)²⁵

Now the duties of justice are all perfect duties, and so, when you violate them, you are responsible for the results. Revolutionaries who are caught may be held legally liable not only for the crime of sedition but for the death, injury, and mayhem that result. But Kant makes it clear that this is not merely a legal point. He says that the consequences of violating a perfect duty should also be imputed to the agent by “his own conscience” (MM 6:431). So someone who undertakes to start or participate in a revolution must regard himself as responsible for the results. A revolutionary must see himself as the author of the loss of life and limb, the social disorder, and the suspension of the juridical condition that results from revolution.

Although this is a more controversial point, this too seems to me to be correct. Even those who are inclined to argue for a “right to revolution” cannot think that revolution is something to be undertaken lightly. Justice exists only where there is government; the revolutionary undertakes to destroy the government, and so undertakes to destroy justice. Of course his aim is to improve the juridical condition. He thinks that justice will rise revivified from its own ashes, like the Phoenix; he hopes to bring about a new and better system of justice, which will come closer to doing its job, which is guaranteeing freedom. As Kant says, revolutionaries undertake “to be unjust once and for all, in order thereafter to establish legal justice on a foundation

²⁵ For a further explanation of the basis and meaning of this view, see my “The Right to Lie: Kant on Dealing with Evil” (CKE essay 5), pp. 141–3.
that is so much more secure” (MPJ 6:353). But for however short a time, there will be a condition in which there is no justice. During this period, as a result of conditions the revolutionary himself has instigated or supported, lives will be lost, injuries sustained, property rights violated, careers interrupted and destroyed. During this period, the victims of these disasters will have neither recourse nor compensation. He may fail, and if he fails, all of this will have been for nothing. Surely the victims of social upheaval may rightly regard the revolutionaries as the authors of their injuries. And surely the revolutionary cannot just say: the consequences were not my fault, since I was doing what I had a right to do.

So far, we have two consequences. First, the conclusion that there is no right to revolution, in Kant’s sense of a right, is unproblematic. Of course revolutionaries, if they fail or are caught in time, may be punished. The idea of a government that is not entitled to defend itself in this way makes no sense. But this is not merely a matter of what the law has to say, of whether there can be a legal right to revolution. Even from a purely moral point of view, a just revolution would have to be in accordance with the general will of the people, and we have seen that this is impossible. Either the government is the voice of the general will of the people, or there is no voice; in neither case can the revolutionary claim the mandate of the general will. So the revolutionary is doing something he has no right to do. And that means that all the consequences of the revolution are imputable to him. If he wins, his party becomes the legitimate government, and as such they are not legally answerable for their actions; and morally, then, he at least has an excuse. But if he loses, he is nothing more than a murderer and a thief. And this last should be not only in the government’s eyes, but in his own.

But there is one consequence that does not follow. So far, I have said nothing that implies that there are no circumstances in which a good person would revolt.

7. When the Virtuous Person Revolts

More than any other philosopher in the tradition, Kant gives us an agent-centered moral philosophy. His primary question is not who shall we praise or blame, or which actions are right and which wrong. He has things to say about these questions, but they fall out of the discussion of what he takes to be the central question of moral philosophy: what must I do? So far, we have remained on the territory of duties of justice, and have discussed what we must say about revolutionaries and revolution. But we have not yet addressed the main question: should we ever revolt? Nor could
we address that question, so long as we kept the discussion to the duties of justice. To approach this question we must turn to the doctrine of virtue, to ethics.

Again we will need some background. Earlier I said that the duties of justice are external duties. The sense in which they are duties is that we may legitimately be forced to do them. The duties of virtue, by contrast, are internal duties. The sense in which they are duties is that morality requires them of us, which is to say that we require them of ourselves. Duties of virtue are concerned with our motives and attitudes. They arise from the command that we should not only do certain things, but do them for moral reasons: in Kantian language, they command us to make duty itself the incentive of our action. As the constitutive aim of the duties of justice is the achievement of external freedom, so the constitutive aim of the duties of virtue is internal freedom: for through the cultivation of virtue we achieve the freedom of the will (MM 6:379–384).²⁶

Kant believes that all human action is purposive (G 4:427; MM 6:381; MM 6:385; REL 6:4; REL 6:6–7 n.). This does not mean that we always act for the sake of some end in which we have taken a prior interest; but it does mean that we always act with some end in view. When we undertake an action, there is always some end to that action which we represent to ourselves as good. It does not have to be an end we are trying to bring about—it may be an end we wish not to act against, or wish to respect. In the moral case, for instance, we may simply see our action as expressing respect for humanity as an end in itself. Because morally good actions as well as others are purposive, Kant argues that the cultivation of virtue is achieved through the adoption of morally obligatory ends (MM 6:380–381; 384–385).

Kant thinks that there are duties, and so ends, that belong specifically to the territory of virtue: the pursuit of the happiness of others, and the cultivation of our own talents, powers, and character (MM 6:385–389). But ethics encompasses all of our duties. It is a duty of virtue to do the duties of justice from the motive of duty. In other words, justice itself is a virtue. And Kant says that the virtue of justice is possessed by one who makes the rights of humanity his end (MM 6:390).

In ordinary circumstances, this is the end we have in view when we carry out the moral duty to obey the law. If you keep your hands off your neighbor’s property, even thinking he has more than his fair share; if you refrain from stuffing ballot boxes, even when that means the better candidate will lose; if you pay your debts, even when you could get away with not doing so, this is

²⁶ For discussion, see my “Morality as Freedom” (CKE essay 6), pp. 176–83.
because you care about the rights of others. The end you have in view is that their rights should be respected.

It is because justice is a virtue that there is an ethical duty, as well as a duty of justice, not to revolt. The just person respects the rights of humanity, and for this reason respects the government that enforces those rights, and the juridical condition that makes their enforcement possible. But it is by no means obvious that a person who makes the rights of humanity his end would never, under any circumstances, oppose the extant government. If this is correct, nothing in Kant’s theory absolutely commits him to the view that a good person would never revolt. Nor, I believe, is this what he himself thought.²⁷

Justice exists to preserve the rights and freedom of everyone: this is the idea, and the substantive ideal, of justice. But we all know that the procedures of justice may be used against these very ends. Apartheid South Africa horrified us more, perhaps, than more egregious despotisms, because of its outward forms of legality, its caricature of a modern western democracy. The same is true of America before the civil war. A master recapturing a runaway slave is brutal; but a court’s ordering the slave’s return is a mockery of justice. Women and children have often been returned to the legal custody of the very husbands and fathers who have abused them; Captain Bligh does not just beat his men, but does it with the Queen’s authority. There is a special kind of horror associated with such cases. For in such cases the very language of rights, and the robes and wigs and forms and ceremonies with which we celebrate our will to form a general will, are used to corner the helpless. The agencies of justice are used to reinforce injustice; and what should be the recourse of the oppressed is the very tool of the oppressor. In such cases, justice is turned against itself, perverted; human rights need protection from the law itself.

Kant does not say this, of course, but he was keenly sensitive to the special kind of horror I am talking about here. This shows up, interestingly, in a footnote to the very section of the Metaphysical Principles of Justice in which Kant argues that revolution is always wrong. He says:

Of all the abominations involved in the overthrow of a state through revolution, the murder of the monarch is still not the worst, because it is possible to imagine that the people are motivated by the fear that, were he to remain alive, he might regain his

²⁷ Kant explicitly acknowledges the existence of conscientious revolutionaries in the course of a rather odd discussion of the morality of the death penalty at MPJ 6:333–334. People join rebellions both for honorable and for venal motives, Kant notices, and we might think that the former should be punished less severely than the latter. But applying the death penalty to all concerned achieves this, Kant argues, since “a man of honor would choose death and . . . the knave would choose servitude.” The knave therefore is punished more severely.
power and give them the punishment they deserve; in that case, this deed would not be an act of penal justice, but only one of self-preservation. It is the *formal execution* of a monarch that fills the soul, conscious of the Ideas of human justice, with horror, and this horror returns whenever one thinks of scenes like those in which the fate of Charles I or Louis XVI was sealed. (MPJ 6:321 n.; my emphases)

Kant proceeds to examine the sources of this particular kind of horror. In the *Groundwork*, Kant had argued that since we cannot consistently will an evil maxim as a universal law, a person who acts wrongly cannot be doing *that*, but instead is making himself an exception to the law (G 4:424). Recalling these ideas, Kant argues here that to get rid of the ruler is to violate justice, and so to make yourself an exception to the law, but to punish the ruler (to executive the supreme executive) is to subvert justice—not just to make yourself an exception to the law, but actually to repudiate it, and so to make a kind of law of unlawfulness itself. In *Religion within the Limits of Reason Alone*, Kant distinguishes human evil, which consists in making yourself an exception to the law for the sake of satisfying some contingent interest, from the possession of a malevolent will, one that wills evil for its own sake, that wills evil as a law. Contrary to Augustine, Kant does not think that human beings choose evil for its own sake (REL 6:35). Yet here Kant argues that the execution of the monarch is like an exhibition of a malevolent will, because it presents an evil act in the outward forms of a lawful one. This is why we find it so horrifying.

Revolutionaries who formally execute a monarch perform an unjust act while dressed in the robes and wigs of justice; in so doing, they seem not just to ignore justice, but to mock it. But in cases of the sort I have mentioned, the state may seem to do this too. And then the just subject may find herself locked in exactly the sort of horror that Kant describes. When the very institutions whose purpose is to realize human rights are used to trample them, when justice is turned against itself, the virtue of justice will be turned against itself too. Concern for human rights leads the virtuous person to accept the authority of the law, but in such circumstances adherence to the law will lead her to support institutions that systematically violate human rights.²⁸ The person with the virtue of justice, the lover of human rights, unable to turn to the actual laws for their enforcement, has nowhere else to turn. She may come to feel that there is nothing for it but for her to take human rights under her own protection, and so to take the law into her own hands.

The decision to revolt would be a hard one to make because the person who loves the rights of humanity necessarily places a high value on the actual

²⁸ I owe this formulation to Andrews Reath.
procedures of justice as well as on the substantive ideal of protecting human rights. And, as I argued earlier, the procedures of justice are important not just because they approximate our substantive ideals, but because without such procedures there is no justice at all. Nor, of course, will the achievement of more substantive ideals be the result of the sacrifice. At the very best, revolution will bring only a closer approximation to the ideal. At the very worst, the result will be an extended period in which there is no justice at all, the rights of humanity are trampled underfoot, and a new excuse for tyranny will have been created. Short of that, there may be only marginal improvements, not obviously worth the ruined and ended lives we paid for it. The revolutionary risks this, and knows that she does, when she decides to revolt.

Two things make this decision different from most of the decisions which we make, at least as those are envisioned in Kantian ethics. The first is that the universalization test cannot serve as a guide when we make it. The imperfections of the actual state of affairs are no excuse for revolution—if they were, revolution would always be in order. It is the perversion of justice, not merely its imperfection, which turns the virtue of justice against itself. But the difference between imperfect justice and perverted justice is a matter of pure judgment. There is no criterion for deciding when imperfection has become perversion, when things have gone too far. If we turn for help to the Universal Principle of Justice, all it says is: do not revolt. The revolutionary cannot claim he has a justification, in the sense of an account of his action that other reasonable people must accept. That consolation is denied him. It is as if a kind of gap opens up in the moral world in which the moral agent must stand alone.

The revolutionary’s stance, in fact, is one of paternalism towards a whole society, when paternalism, which after all is a kind of despotism, is what he hates the most. And this reminds us that revolution is only one case, the most vivid perhaps, in which good people take the law into their own hands. Another, much more common and familiar sort of case, is when we paternalize an adult human being who is engaged in some sort of self-destructive behavior. Most of us for instance would take action to prevent a suicide (at least unless the person was hopelessly ill and in great pain) even if we didn’t think the person had simply gone crazy, but was really acting from his own choice. And many of us would be prepared to take action to prevent a close friend from going too far with self-destructive activities like abusing drugs. The structure of the problem we face in these cases is exactly the same as that of the problem faced by the revolutionary. When we see someone perverting or destroying the humanity or autonomy in his own person, our respect for his humanity or autonomy is turned against itself. Respect for his autonomy demands that we
respect his right to choose. But if we respect his autonomy we cannot stand quietly by and watch while he destroys it. Like justice in an unjust state, his autonomy requires protection against itself. And so, like the revolutionary, the paternalist violates his respect for autonomy in order to save its object. Paternalists too take the law into their own hands. Here too, there is no way of deciding exactly when the moment has come, when things have gone too far. Morality cannot tell you when to leave the moral law behind, in order to make sure that the world remains a place where morality can flourish. In making this kind of decision, you are entirely on your own.

And this brings us to the second thing that makes this decision different from others. Since these decisions necessarily involve stepping outside of the law, they involve what Bernard Williams has called “moral luck.”²⁹ For as Kant says, if you do more or less than the law requires, the consequences are on your head. The form of moral luck Williams describes exists in a case with these features: the agent does something that is, on the face of it, wrong, but may be justified by success. If the project fails, the agent will simply be wrong, and the consequences will be, in his own eyes and those of his victims, on his head. But if the project succeeds, he may at least be justified in his own eyes and in the eyes of outsiders, if not of those of his immediate victims. Williams thinks that the concept of moral luck is a notion inimical to Kantianism, but the case of the revolutionary has exactly this structure. Success makes the revolutionary, legally, the new voice of the general will, and, morally, one who has promoted the cause of justice on earth. In his own eyes and the eyes of the spectators this will justify him, though the victims of the revolution will still have a complaint. Failure, on the other hand, means that he has destroyed justice for nothing, that he is guilty of murder and treason, an assailant of the general will, and the enemy of everyone. Revolution may be justified, but only if you win.

Perhaps it will be doubted whether the view I have put forward could possibly be Kant’s. Moral life in bad circumstances can be messy; Kant is often accused of denying this point. But I actually think it is a strength of his view that it allows us to see how one form of messiness arises—and that it does so without resorting to the pat explanation that we happen to be subject to an unsystematic plurality of duties which can of course conflict.³⁰ In the case of the conscientious revolutionary, the problem is not a conflict between different duties but rather the fact that a single duty, the duty to care for the

²⁹ See Bernard Williams, “Moral Luck,” in his volume Moral Luck.

³⁰ An account that, to my mind, makes sense of the complexity of morality at the expense of depriving morality itself of sense. I am indebted to Tamar Schapiro for illuminating discussions of this topic.
rights of humanity, implodes when we try to act on it in an unjust world. But could Kant have recognized this? It is hard to know for sure, for the fact is that Kant never discusses the question whether the ethical duty not to revolt is always in place. His discussions of revolution are all concerned with the duty of justice, and it is, interestingly, the punishability of revolution that he always emphasizes. My view that he did recognize the possibility I’ve described here for the most part comes not from his published writings, but from what we know about his attitude towards the revolutions of his day. But there is one thing in the published writings that does support my claim. Listen again to part of the passage from “On the Old Question” where Kant praises the enthusiasm of the spectators of the French Revolution. Listen, in particular, to the way Kant imagines the deliberations of the would-be revolutionary himself:

The revolution of a gifted people which we have seen unfolding in our day may succeed or miscarry; it may be filled with misery and atrocities to the point that a sensible man, were he boldly to hope to execute it successfully the second time, would never resolve to make the experiment at such cost. (OQ 7:85)

Kant’s revolutionary considers the prospects of success and views the costs of failure as his own. In this, he follows the pattern I have described.

8. Conclusion

The Kingdom of Ends is an ideal, not a goal. For the most part, our duty is to live as if it were real, not to bring it about that it is so. A Kantian doesn’t paternalize every time a loved one makes a poor choice; a Kantian doesn’t revolt every time the government makes a wrong decision. In the one case, respect for autonomy, in the other, respect for the rule of law, matter to her more than the content of the particular decisions that are made.

But in some cases, respect for autonomy, or respect for the rule of law, can be turned against themselves. When autonomy is used self-destructively, and law turns against the rights it is there to protect, morality ceases to give us clear guidance how to proceed. The claims of right remain clear, but the demands of virtue become ambiguous. In such cases, good people may do things that are, in one fairly clear sense, wrong.³¹ A dogmatist may deny that a good person would ever do this; a skeptic may think such actions are unproblematic,

³¹ What fairly clear sense? Not universalizable, certainly; but the more important point is what that shows: that such an action relates us wrongly to others. Almost any moral philosopher would grant that wrong actions relate us wrongly to others, of course, but I mean something different. I don’t regard that as an incidental feature of wrong actions, a mere effect of the fact that the actions are wrong and therefore others don’t want us to do them. I regard the way it relates you to yourself and others
showing only that morality is not unconditional after all. I believe that both views oversimplify our moral situation: the world is a less comfortable home for morality than they suppose. Skepticism and dogmatism are attempts to evade one of the most important facts about moral responsibility. The moral life can contain moments when responsibility is so deep that even a justification is denied us. The agent who can only save morality by violating its principles faces such a moment. At such moments the virtuous person may find that he must take morality itself under his own protection, and so take even the moral law into his own hands.

9. Afterword: Why We Find Revolution Thrilling

Earlier I claimed that the moment of revolution, though hard and full of pain for the revolutionary himself, is thrilling to the spectator. I also claimed that neither skepticism nor dogmatism could give an adequate account of that thrill. How should a Kantian account for it?

Kant, as we have seen, had his own explanation, detailed in the essay “On the Old Question: Is the Human Race Constantly Progressing?” There, Kant argues that revolutionaries of his day sought republican forms of government, the only form under which Kant thought real justice and peace could possibly be secured. With peace and justice would come enlightenment. The nations would be able to guarantee civil liberties, and spend money on education rather than on arms (IUH 8:26–28; CBHH 8:121). Enlightenment, the condition in which people think for themselves, leads to morality, the condition in which people live by the laws of their own autonomy (WE 8:35). Thus enthusiasm for the revolution can be understood as enthusiasm for the future of morality itself.

My explanation is different, though not incompatible with Kant’s. If Kant is right, human freedom is autonomy and autonomy is morality. This makes human freedom a paradoxical thing. In everyday life, it consists to a surprising extent in having to do things. When we are dealing with evil, it consists to a tragic extent in having to put up with things. When faced with oppression, bullying, and heartbreaking unfairness, freedom can appear as helplessness; autonomy as a terrifying defenselessness. There’s a real antinomy here, a natural dialectic that throws us into doubt about the nature and the value of our own moral capacity. Plato gave voice to this worry in the very earliest works of Western moral philosophy; Thrasymachus laughs at the just person as someone easily tricked into serving the interests of the stronger; Callicles argues as of the essence of the morality of an action. See my “The Reasons We Can Share” (CKE essay 10), pp. 275–6 and 300–2; and SN 3.4.1, p. 114 n. 26.
that even self-government is merely a form of slavery. \(^{32}\) Freud and Nietzsche recast the worry in more psychological terms. Morality is an expression of strength, the will to power, the aggressive instincts, turned inward. It is the magical transformation of masterfulness into self-mastery that makes us human. But morality is a form of weakness, for the will to power, the aggressive instincts, are eating us alive from the inside out, sapping our strength, making us herd animals, victims, sickly prey. \(^{33}\) Autonomy gives life meaning, showing us that the world is ours to create; but autonomy is morality and morality leads to nihilism, for the good have no option but surrender.

The moment of revolution is a vindication of morality, and so of our humanity. We are the masters of our own self-mastery; in control of our self-control. Being human is not sapping our strength, for we still know when to fight. The revolutionary does not become strong and free when he picks up his gun. Instead, he proves to us that he’s been free all along. It is because the laws of morality are his own laws that he is finally prepared to fight for them. The doubt created by the antinomy is dispelled. Revolution teaches us nothing but what we have known all along: that the good person and the free person are one and the same. \(^{34}\)

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\(^{32}\) Plato, R 338 ff.; Gorgias 491–2.

\(^{33}\) See Friedrich Nietzsche, The Genealogy of Morals, essay 2, and Sigmund Freud, in, for example, Civilization and Its Discontents, chapter 7.

\(^{34}\) Versions of this essay were delivered at the Central Division meeting of the American Philosophical Association in the spring of 1991, where I had the benefit of a helpful and sympathetic commentary by Andrews Reath; at the Kantian Ethics Workshop in Chapel Hill in the fall of 1991, where I received challenging comments from Simon Blackburn; and at the Political Philosophy Colloquium in Princeton in the fall of 1995. I am grateful to the audiences at all three occasions for many illuminating comments and useful objections; I would like especially to thank Stephen Engstrom, Arthur Ripstein, and Avishai Margolit. I have benefited from discussing the issues of the essay with Charlotte Brown, Daniel Brudney, Peter Hylton, Arthur Kuflik, Tamar Schapiro, and Jay Schleusenser; and from written comments sent to me by Kenneth Westphal. The essay was completed while I was a Laurence S. Rockefeller Visiting Fellow at the University Center for Human Values in 1995–6; I am deeply grateful both for the time the Center provided me to finish the essay, and for the useful discussions of it I had with the Fellows there. But my primary debt, here as in everything that I write, is to the example and inspiration of my teacher, John Rawls.